

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

LC2003-000901-001 DT

04/19/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT  
P. M. Espinoza  
Deputy

FILED:\_\_\_\_\_

TM DEVELOPMENT GROUP LLC

CARLTON C CASLER

v.

RICHARD PETERSON (001)  
MELANIE PETERSON (001)

RICHARD PETERSON  
MELANIE PETERSON  
6474 S NASH WAY  
CHANDLER AZ 85249

REMAND DESK-LCA-CCC  
TEMPE JUSTICE CT-WEST

RECORD APPEAL RULE / REMAND

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since its assignment on March 5, 2004. This decision is made within 60 days as required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the memoranda submitted by Appellants (Appellees have chosen not to file a memorandum in this case), and the record from the West Tempe Justice Court.

The only issues raised by the Appellant on appeal is whether the trial judge abused his discretion in awarding damages in an amount less than requested to by Appellant/Plaintiff, whether the trial judge abused his discretion in awarding attorney's fees in an amount less than requested by Appellant/Plaintiff, and Appellant's request for attorney's fees and costs on appeal. This case originated when the Appellant/Plaintiff filed its complaint in the West Tempe Justice Court requesting damages pursuant to a residential lease agreement between Appellant and Appellees. The Appellant/Plaintiff alleged that the Appellees had vacated the property and left it in such a condition that the Appellant was damaged and forced to make extensive repairs. The issues of the amount of damages was hotly contested during the trial. The transcript of the trial does not contain any explanation of the ruling made by the trial judge. Appellant claims that the

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trial judge failed to record closing arguments and his rulings on the tape recording.<sup>1</sup> Appellant asserts that it is entitled to a trial *de novo*; however, Appellants' assertion that the trial judge made his findings at the end of the trial is not supported by the record. In fact, the record reflects that Appellant failed to make a request for specific findings of fact and conclusions of law. No explanation of the trial judge's ruling exists within the record submitted to this court. Therefore, this Court will review the record to determine if sufficient evidence exists to support the trial judge's order for damages, and the judgment issued in this case. When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.<sup>2</sup> All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.<sup>3</sup> If conflicts in evidence exists, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.<sup>4</sup> An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.<sup>5</sup> When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.<sup>6</sup> The Arizona Supreme Court has explained in State v. Tison<sup>7</sup> that "substantial evidence" means:

More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.<sup>8</sup>

A trial judge's computation of damages in a hotly contested case involves analysis and interpretation of the credibility of witnesses and competency of the exhibits admitted. A trial judge's determination of facts will not be set aside absent an abuse of discretion. And, such a decision must be affirmed when supported by substantial evidence. This Court determines that

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<sup>1</sup> Appellant's Opening Memorandum, at page 5.

<sup>2</sup> State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

<sup>3</sup> State v. Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert.denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

<sup>4</sup> State v. Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert.denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

<sup>5</sup> In re: Estate of Shumway, 197 Ariz. 57, 3 P.3<sup>rd</sup> 977, review granted in part, opinion vacated in part 9 P.3<sup>rd</sup> 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

<sup>6</sup> Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

<sup>7</sup> Supra.

<sup>8</sup> Id. At 553, 633 P.2d at 362.

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the trial judge's ruling was supported by substantial evidence and Appellees contested many (if not all) of Appellant's claimed damages. The trial judge's order for damages in an amount less than requested by Appellant/Plaintiff was not an abuse of discretion.

Similarly, Appellant's allegation of error with regard to the trial court's order for attorney's fees must be reviewed for an abuse of discretion by the trial judge.<sup>9</sup> In this case, Appellant had requested attorney's fees of \$3,240.00. The Court allowed less than half of that amount - - and awarded \$1,500.00 for attorney's fees. It appears from the judgment signed May 27, 2003, that the trial judge wrote in that specific amount himself, as it appears in the same color of ink as his signature. Given the diminution of damages by the trial court (from those requested by Appellant) it logically follows that the trial court would diminish the attorney's fees so that the attorney's fees would not exceed the amount of judgment. This Court finds no abuse of discretion.

Appellant argues that the trial judge has no discretion in awarding the attorney's fees and that attorneys fees are required when the case arises out of contract. This Court rejects that position and concludes that attorney's fees, even those arising from a contract, are discretionary with the court. A.R.S. Section 12-341.01(A) provides in part:

In any contested action arising out of a contract, express or implied, the court may award the successful party reasonable attorney's fees.... This section shall in no manner be construed as altering, prohibiting or restricting present or future contracts or statutes that may provide for attorney's fees.

This Court concludes that the trial court did not err in this case.

IT IS THEREFORE ORDERED affirming the judgment and decision of the West Tempe Justice Court in this case.

IT IS FURTHER ORDERED denying Appellant's request for attorney's fees and costs incurred on appeal.

IT IS FURTHER ORDERED remanding this matter back to the West Tempe Justice Court for all further and future proceedings, if any, in this case.

/ s / HONORABLE MICHAEL D. JONES

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JUDICIAL OFFICER OF THE SUPERIOR COURT

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<sup>9</sup> Fisher on Behalf of Fisher v. National General Insurance Co., 192 Ariz. 366, 965 P.2d 100 (App. 1998).  
Docket Code 512